2563

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

CLERE CLOTHING COMPANY, a corporation, *Appellant,*

vs.

THE UNION TRUST & SAVINGS BANK, a corporation, Trustee in Bankruptcy of the Estate of PRAGER-SCHLESINGER COMPANY, a corporation, Bankrupt, *Appellee.*

IN THE MATTER OF THE ESTATE OF PRAGER-SCHLESINGER COMPANY, a Corporation, Bankrupt.

Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

BRIEF OF APPELLANT

BELDEN & LOSEY,
Attorneys for Appellant.

CHAS. P. HARRIS,
Of Counsel.

STUTES PRINTING CONCERN 815 MAIN AVENUE SPOKANE, U. S. A.

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

CLERE CLOTHING COMPANY, a corporation, *Appellant,*

vs.

THE UNION TRUST & SAVINGS BANK, a corporation, Trustee in Bankruptcy of the Estate of PRAGER-SCHLESINGER COMPANY, a corporation, Bankrupt, *Appellee.*

IN THE MATTER OF THE ESTATE OF PRAGER-SCHLESINGER COMPANY, a Corporation, Bankrupt.

Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

BRIEF OF APPELLANT

STATEMENT OF THE CASE.

Pages referred to in this brief refer to pages of the Transcript of Record.

Prager-Schlesinger Company is a corporation organized under the laws of the State of Washington, with its principal place of business at Spo-

kane, Washington, where it has been carrying on its business for a number of years prior to the month of April, 1912.

The Clere Clothing Company is a corporation organized under and by virtue of the laws of the State of New York and doing business in the City of Syracuse, New York.

Prior to the month of April, 1912, the Prager-Schlesinger Company became indebted, in a considerable sum, to the Clere Clothing Company on account of merchandise sold and delivered by the Clere Clothing Company to the Prager-Schlesinger Company, and on account of borrowed money. During the month of April, 1912, the Prager-Schlesinger Company was adjudged a bankrupt by the District Court of the United States, for the Eastern District of Washington, Northern Division. The bankrupt offered a composition which in due course of administration, was accepted by the creditors of the Prager-Schlesinger Company and was afterwards confirmed by the Court. The money to carry out the composition was advanced by this appellant, the Clere Clothing Company, one of Prager-Schlesinger Company's largest creditors at that time, and after the composition had been effected, the Prager-Schlesinger Company's assets were turned over to the Clere Clothing Company.

After the assets of the Prager-Schlesinger Company were turned over to the Clere Clothing Company, the Clere Clothing Company procured the

services of H. L. Gilmore & Company, commercial adjusters of the City of Syracuse, to conduct a sale of the stock.

H. L. Gilmore & Company continued the sale from some time in May, or the first of June, 1912, until about the 31st day of July, 1912. During the time Gilmore & Company was conducting the sale, new goods were shipped by the Clere Clothing Company to replenish the stock to a very considerable amount. After Gilmore & Company had completed their sale in the latter part of July, 1912, there was still on hand, a large amount of merchandise and at that time, an arrangement was made between the Clere Clothing Company, and the Prager-Schlesinger Company by which the latter company was to take over this merchandise on consignment.

For the protection of the Clere Clothing Company, an arrangement was made whereby the stockholders of the Prager-Schlesinger Company delivered to T. H. Clere all the capital stock of the Prager-Schlesinger Company, except one share held by L. A. Schlesinger, and one share held by H. R. Newton. This stock was given to T. H. Clere in trust for the former stockholders, the intention being to permit the old stockholders of the Prager-Schlesinger Company to pay out the indebtedness then due the Clere Clothing Company, and at the same time, give the Clere Clothing Company absolute control of the stock of goods, thus protecting itself on account of the money ad-

vanced to effect the composition, as well as on account of additional stock added to the old stock obtained by the composition order.

The stock then, from the last of July, 1912, until the 25th day of January, 1913, was held by the Prager-Schlesinger Company on consignment, with T. H. Clere holding 498 shares of the capital stock of the Prager-Schlesinger Company, H. R. Newton one share, and L. A. Schlesinger the other share, making the full amount of the capital stock.

About the 25th day of January, 1913, Mr. Clere was in Spokane, and Mr. Schlesinger, who was a large stockholder in the Prager-Schlesinger Company and who had turned over his stock, with the other stockholders, to Mr. Clere, to hold in trust, suggested the purchase of the stock then on hand by the Prager-Schlesinger Company, together with the furniture, fixtures and accounts, etc., and thereupon, an inventory was taken by Mr. Schlesinger, and submitted at a special meeting of the trustees of the Prager-Schlesinger Company, on the 25th day of January, 1913. There were present at this meeting, T. H. Clere, L. A. Schlesinger, and H. R. Newton, all the trustees. At this meeting, the inventory having been submitted, which showed the inventory of stock, etc., at $30,640, an offer was made by the Prager-Schlesinger Company to buy the stock of merchandise, and to give its demand note in payment, and this offer was accepted by the unanimous vote of the trustees and stockholders, and the demand note evidencing

the purchase by the Prager-Schlesinger Company, payable to the order of the Clere Clothing Company, in the sum of $30,640, was executed and delivered to the Clere Clothing Company. The sale of this stock of merchandise was thereafter ratified by the proper officers of the Clere Clothing Company at a meeting held in Syracuse, New York.

This note forms the basis of one of the appellant's claims in the present proceedings against the Prager-Schlesinger Company, which has been disallowed by the Referee and the District Court.

After the execution of this note, and after January 25th, 1913, Clere Clothing Company sold outright to the Prager-Schlesinger Company, merchandise of the value of $1610.67, and this item forms the second claim in dispute herein, claimed to be due by the Clere Clothing Company from the Prager-Schlesinger Company, which claim also was disallowed by the Court, and from which order this appeal is prosecuted.

The business continued after January 25, 1913, under the name of the Prager-Schlesinger Company, until the filing of the voluntary petition in bankruptcy herein, under date of July 14th, 1913, by the Prager-Schlesinger Company, brought about by resolutions of the Prager-Schlesinger Company, Messrs. Clere, Newton and Schlesinger, trustees and stockholders, participating, and at the time of the filing of the voluntary petition in bankruptcy, a receiver was appointed, and after the

proper time had elapsed, an adjudication was made, and a Trustee appointed, since which time the estate has been administered in the usual way.

These proceedings in bankruptcy above referred to were not instituted by the Prager-Schlesinger Company until L. A. Schlesinger, acting on behalf of said company, had gone into the State Court and caused a Receiver to be appointed in these proceedings, which proceedings were had without the knowledge of T. H. Clere, until after his arrival in Spokane, he having been advised that there was trouble in connection with the Prager-Schlesinger Company.

The claims of the Clere Clothing Company were duly filed with the Referee in Bankruptcy and allowed, and thereafter, objections were filed to each of the claims of the Clere Clothing Company, the objections being shown on page 2. A hearing was had and thereafter, the Referee in Bankruptcy handed down his opinion shown on page 8, and thereafter, the Referee made his order disallowing and expunging the claims of the Clere Clothing Company as shown o npage 6. An appeal from the order of the Referee was taken by the appellant, and a hearing was had thereon, and thereafter, the District Judge affirmed the order of the Referee, denying said claims and each of them, and expunging same from the list of claims filed in said estate, and from that order, this appeal is taken.

ASSIGNMENTS OF ERROR.

1. The Court erred in finding that the opinion of the referee contained a full and accurate review of the testimony upon the hearing to the objections of the claims of the Clere Clothing Company.

2. The Court erred in holding that the conclusion of the Referee that the bankrupt was a mere agent or instrumentality, through which the Clere Clothing Company transacted its business in Spokane, and that to allow said claim against the bankrupt would be a fraud upon creditors.

3. The Court erred in signing its order and judgment herein complained of, for the reason that said order and judgment is at variance with and not supported by the finding of the Court, in his opinion handed down in said cause.

4. The Court erred in disallowing and ordering expunged the claim of the Clere Clothing Company for Thirty Thousand Six Hundred Forty ($30,640) Dollars, for the reason that the record does not disclose the fact that said claim was made up of items aside from the purchase price of the stock of goods, transferred by the Clere Clothing Company to the Prager-Schlesinger Company on the date of the execution of the note exhibited in plaintiff's complaint, of $30,640.

'. The Court erred in disallowing said claim, and based its opinion for so doing, as suggested

in the opinion of the Court, on "strong suspicion," that said claim was made up of items aside from the purchase price of the stock of goods, and not based upon the record or the evidence in the cause.

6. The Court erred in signing said judgment and order complained of, for the reason that said judgment is not warranted by the opinion and findings of the Court herein, but that as shown by the opinion of the Court, same is based not upon fact, but as stated by the Court: "There is a strong probability that this note was given to make the Clere Clothing Company whole on account of its dealings with the bankrupt, and included other items than the single item for goods sold." That if said judgment of the Court was in accordance with the fact, the Court erred in not ordering a hearing to determine what of said whole amount, was improperly charged in said item, and in refusing to allow said claim for the amount less such unlawful items included in said claims, as suggested by the Court.

7. The Court erred in holding that the bankrupt was a "mere agent or instrumentality," through which the Clere Clothing Company acted, and the Court further erred in holding that to allow said claim, or either of said claims of Clere Clothing Company against the bankrupt, would be a fraud against the other creditors.

8. The Court erred in holding and adjudging that that part of the Clere Clothing Company's claim in the sum of $1610.67 should be expunged

for the reason that there is disclosed from the record, no evidence that said goods were not sold and delivered, as alleged and set out in the claim of Clere Clothing Company, presented before the Referee in Bankruptcy, and for the further reason that the evidence discloses and shows conclusively that the items going to make up said sum of $1610.67 was sold and delivered in the usual course of business.

ARGUMENT.

The District Court in passing upon the order of the Referee on review, in the course of his opinion suggests:

> "An examination of the entire testimony leaves a *strong suspicion* that the promissory note of $30,640 was made up of items *aside from the purchase price* of the stock of goods transferred on the date of the execution of the note. In other words, there is a *strong probability* that this note was given to make the Clere Clothing Company whole on account of its dealings with the bankrupt and included other items than the single item for goods sold. But if I am correct in this conclusion it would only be ground for reducing the amount of the claim and would not justify its entire rejection. The other question presented by the objections is by no means free from difficulty. But while the two corporations were separate and distinct, I am by no means satisfied that the referee erred in his conclusion that the bankrupt was a mere agent or instrumentality through which the claimant transacted its busi-

> ness here and that to allow these claims against the bankrupt would be a fraud upon other creditors."

Was the Court warranted in his conclusion as shown by the record, and is a *"strong suspicion,"* or a *"strong probability"* sufficient ground for the trial Court to expunge a claim in bankruptcy? The law is well settled that where a claim has been duly presented by a creditor in due form and allowed, the duty rests upon the objecting Trustee to produce evidence, the probative force of which shall be equal to or greater than the evidence offered by claimant.

> *Whitney vs. Dresser,* 200 U. S. 352; s. c. 50 L. Ed. 584.

The Court in his opinion suggests there is a *strong suspicion* that the note for $30,640.00 was made up of items aside from the purchase price of the stock of goods transferred, but from the entire evidence, in view of the testimony of the three witnesses referred to hereafter, we would like to inquire what these items were, and would suggest to opposing counsel in their brief they point out to this Court what these items were, and point out also testimony whose probative force is equal to or greater than the testimony of the three witnesses who testified positively as to the consideration for the note.

The trial Court found that the two corporations were separate and distinct, but suggests that he was by no means satisfied that the Referee erred

in his conclusion that the bankrupt was a mere agent or instrumentality through which the claimant transacted its business, and finally concluded that it would be a fraud upon the other creditors to permit the allowance of the claim of the Clere Clothing Company. It would seem to us therefore, that upon the face of the opinion of the trial Court, the opinion of the Referee should have been set aside, and this claim allowed. Claims are not expunged or disallowed because of "strong suspicion" or "strong probability," but proof is necessary.

There is on behalf of claimant, Clere Clothing Company, the direct and positive testimony of three witnesses. The testimony of T. H. Clere is to the effect that at the time the note in question was executed, an inventory of the stock of the Prager-Schlesinger Company had been prepared and was then before the meeting, and that the inventory showed the sum of $30,640, being the amount for which the note was given (page 120). The testimony of H. R. Newton (page 99) is to the effect that the inventory which had been prepared, and was exhibited on the date the note in questio nwas executed, showed there was merchandise on consignment belonging to the Clere Clothing Company in the sum of $30,640. The testimony of E. H. Belden (page 106), is to the effect that at the time the note in question was executed, the inventory previously taken was before him; that he prepared the note and that the note is in

his handwriting, and that the amount of the note was taken from the inventory then before him. There is therefore, the positive and direct testimony of three witnesses to this transaction, all to the effect that at the time T. H. Clere came to Spokane, a day or so prior to the execution of the note in question, L. A. Schlesinger, of the Prager-Schlesinger Company, who had been manager of the Prager-Schlesinger Company, had taken an inventory of the stock, furniture, and fixtures, and that this inventory totalled $30,640. It was therefore agreed between the parties, that the stock of goods should be sold on that basis, and the note was given in conformity with the resolutions passed by the respective parties. Can there be any question under all these circumstances, that the note for $30,640 was given for the purchase price of the stock of goods, wares, merchandise, furniture and fixtures, and perhaps the open accounts, all of which was represented by this inventory? With the above evidence and no other evidence, it must be plain to the Court that this claim should be allowed.

As against the direct and positive testimony of the three witnesses above, we have the etstimony of Mr. Nuzum. It appears from the record (page 81), that Mr. Nuzum was the attorney for S. S. Prager and Clara Prager, his wife, and that he had brought two actions n the Superior Court of Spokane County to recover the sum of about $15,000 for stock; that is, stock in the corporation

which they claimed was held in trust by the Clere Clothing Company for them. It appears further on page 82, of the record, that in one of those cases, Mr. Nuzum had procured the appointment of a Receiver in the State Court, prior to the bankruptcy proceedings. In his testimony Mr. Nuzum attempts to detail some conversations had with Mr. Clere and others, and gives as his recollection only, that the inventory was given at something like $27,000. Further, on page 83, Mr. Nuzum testified: "I don't remember how much merchandise the inventory showed that the Clere Clothing Company had there. I wanted to get the total inventory to show the amount of the note. I understood that this was all the merchandise of the Clere Clothing Company, because they claimed this note was the note for it. I could not tell you what the inventory showed. I know it totaled $27,540.90. Schlesinger got up some memoranda so that we could talk to Clere."

On page 75, Mr. Nuzum states that the inventory in question was last traced to his office. He states that the inventory was in his office, and that he had seen it, and he thinks he gave same to Schlesinger. In view of Mr. Nuzum's testimony, does it not seem singular that so important an instrument as this inventory should get out of his possession, and is the testimony of Mr. Nuzum, given from memory, and considering his connection with this case, entitled to the same weight as that of the positive and direct testimony of three wit-

nesses who were in an absolute position to know exactly what the facts were?

It would appear, however, even from the testimony of Mr. Nuzum, that the stock of merchandise was perhaps inventoried at $27,000, to which add the furniture and fixtures, and the bills and accounts receivable, and no doube same would total the sum of $30,640, notwithstanding the different constructions which Mr. Nuzum would have placed on this inventory, and his inability to produce same or account for its loss, at the time of the trial. Notwithstanding Mr. Nuzum's testimony (page 86), does it not appear strange that this inventory was not turned over to the Receiver in the State Court prior to the institution of the bankruptcy proceedings? Mr. Nuzum suggests that he never thought about turning the inventory over to the Receiver, though the Receiver had been appointed at the time he gave the inventory to Schlesinger.

The testimony of Nuzum is not only contradicted by the direct testimony of Belden and Clere, but also by the circumstances. If the amount of the note was arrived at, as claimed by Nuzum, why was there any necessity of taking an inventory prior to the meeting on the 25th of January, 1913? If the amount of the note was arrived at as detailed by Nuzum, the Court must conclude that Schlesinger, Clere, Belden and Newton deliberately falsified the records of Prager-Schlesinger Company when the resolution was adopted authorizing

the execution of the corporate note by the Prager-Schlesinger Company.

Aside from this testimony, there is the testimony of the expert, one Josiah Richards (page 87), who examined the books. His testimony is interesting because of the theories advanced, and the absence of any real information he discloses in his report. It is no doubt true, as we think is fairly well indicated by the testimony of Richards, that he was unable to tell anything about these books. The facts are, as disclosed by the record, that the books were very poorly kept; in fact, they would hardly constitute what could be termed a set of books, but there can be no deduction made from the testimony of Richards, that the inventory did not show there was $30,640 worth of goods in the place. It will be remembered as disclosed by the record, that T. H. Clere had given the entire management of this business over to L. A. Schlesinger, and that Clere had no direct knowledge of just how the business was being conducted in Spokane, since he had so much confidence in Schlesinger. Clere resided in Syracuse, New York, and did not give the business in Spokane any time or attention, after having conveyed same for the Clere Clothing Company to the Prager-Schlesinger Company. In fact, the record discloses that from the date of the sale until the bringing of the suits in the State Court, through which a Receiver was appointed, just prior to the bringing of these bankruptcy proceedings, Clere was not in Spokane.

As to whether the inventory taken at the time the note was given was a correct inventory or not, it would be difficult to state, but the record does show that as far as the entire transaction was concerned, the inventory as presented by Schlesinger, was accepted by Clere as a true inventory, and Clere acted upon that inventory in the acceptance of the note for $30,640 as the purchase price for their stock, which had been held by the Prager-Schlesinger Company on consignment prior to the sale. If Schlesinger had taken a false inventory, Clere was not a party to that, and as far as is disclosed by the record, relied solely upon the inventory.

As to the second claim of $1610.67, there is no evidence whatever that this balance was not due for goods sold by the Clere Clothing Company to the Prager-Schlesinger Company. We submit, therefore, that unless it should be found by this Court that the course of conduct between the Clere Clothing Company and the Prager-Schlesinger Company was sufficient to constitute a fraud, these claims should be allowed in full, and the finding of the Referee and the District Judge set aside.

What were the transactions here that constituted a fraud? It is true that the Clere Clothing Company or Mr. Clere held all the capital stock of the Prager-Schlesinger Company to whom they had sold their stock of merchandise, but that of itself would not constitute a fraud. In fact, it occurs to us it would show a well figured business propo-

sition. The Clere Clothing Company might have taken a mortgage back on the stock to secure the payment of the note for $30,640, but we submit that under the arrangement worked out in this case, the protection of the Clere Clothing Company was better insured through the arrangement by which Clere held the capital stock of the Prager-Schlesinger Company, together with control on the Board of Trustees, than through the taking of a chattel mortgage. Had a chattel mortgage been taken, there could have been no question raised, and it is a little beyond our power of reasoning or deduction to understand how the Referee and trial Court reasoned that the Clere Clothing Company was a party to a fraud.

The trial Court says: "but while the two corporations were separate and distinct, I am by no means satisfied that the Referee erred in his conclusion that the bankrupt was a mere agent or instrumentality through which the claimant transacted its business here." Does the mere fact that Clere or the Clere Clothing Company held for their security or protection, the capital stock of this corporation, indicate or prove or establish in any way, that the Prager-Schlesinger Company was the agent of the Clere Clothing Company? The entire record discloses that prior to January 25th, the date of the execution of the note, the stock of merchandise was held by the Prager-Schlesinger Company on consignment, and the testimony likewise discloses that after that date, the property was

treated as having been sold by the Clere Clothing Company to the Prager-Schlesinger Company, and the two corporations after January 25th, were dealing with each other the same as the Prager-Schlesinger Company was dealing with any of its other creditors from whom it purchased goods.

The uncontradicted testimony of Clere and Newton shows that the certificates of stock of the Prager-Schlesinger Company were transferred to Clere and Newton in trust for the former stockholders, the purpose at all times being to protect the Clere Clothing Company and to insure the honesty of L. A. Schlesinger in the conduct and management of the Prager-Schlesinger Company's business. This stock was the basis of the suit brought in the State Court by Nuzum, referred to heretofore. It was understood that when the indebtedness to the Clere Clothing Company was paid off, this stock in the Prager-Schlesinger Company was to be transferred to the *cestuis que trustent.* The situation would have been practically the same had the stock remained in the name of the former stockholders, and a power of attorney had been given to Clere to vote the stock at the meetings of the trustees. It seems to us that this transfer of the capital stock in trust, was perfectly proper and legitimate, in view of the fact that Clere Clothing Company had on consignment with the Prager-Schlesinger Company, a large amount of merchandise and that the place of business of the Clere Clothing Company was thousands of miles away

from Spokane. Naturally the Clere Clothing Company was anxious that the stock of goods be managed honestly by the consignee, and in case the consignee did not act fairly and honestly, the Clere Clothing Company desired to be in a position where the manager of the Prager-Schlesinger Company could be removed without the necessity of litigation.

It is an elementary principle of law that a corporation is a legal entity, separate and distinct from the stockholders composing it. The Legislature of the State of Washington has provided that one corporation may hold stock in another corporation and while the Clere Clothing Company did not own any stock in the Prager-Schlesinger Company, we submit that if it had held stock in the Prager-Schlesinger Company, the second objection of the Trustee would not be a valid one.

The Referee in his opinion (page 26), says: "* * * that the Clere Clothing Company simply conducted a branch of its business in Spokane under the name of the Prager-Schlesinger Company, and endeavored to work the machinery of the Prager-Schlesinger Company, a corporation, in such a manner, that if the business failed the creditors, and not the Clere Clothing Company, would be the principal loser." It seems to us that after a consideration of the entire record, this finding is entirely unwarranted. In case the claims of the Clere Clothing Company should be allowed, they would fare in the bankruptcy proceedings,

the same as all other creditors of the Prager-Schlesinger Company. It is not claimed that the Clere Clothing Company has a preference, and it is not seeking to establish a preferred claim in the bankruptcy proceedings, and after the giving of this note, there is no testimony to the effect that the Prager-Schlesinger Company was in any way acting as the agent for the Clere Clothing Company. The fact is undisputed that this stock in the Prager-Schlesinger Company was held by Clere individually though possibly the legal effect of his holding this stock would be that he was holding same in trust for the Clere Clothing Company, as well as for the stockholders of the Prager-Schlesinger Company, but that would in no way establish or create an agency. In fact, it is doubtful whether or not in law, it could be considered that Clere was holding this stock in trust for the Clere Clothing Company.

We call the Court's attention to the case of *In re* Hudson River Elec. Power Co., 173 Fed. 934. The Hudson River Power Transmission Co. was a corporation organized for the purpose of generating electrical power. The Hudson River Elec. Power Co. was a corporation organized for practically the same purpose. The stock of the Hudson River Transmission Co. was owned by the Hudson River Elec. Power Co., whose officers managed it and its business. A petition in bankruptcy was filed against the Hudson River Transmission Co., one of the petitioning creditors being Ludlow Valve

Mfg. Co. The petition was contested on the ground that the Ludlow Valve Mfg. Co. was not a creditor, and that the merchandise in question was sold to the Hudson Elec. Power Co. and not to the Transmission Co. In discussing the proposition, after reviewing the facts, the Court said:

> "The one corporation was not the agent of the other * * * neither did the fact that the one corporation exercised a controlling influence over the other through the ownership of its stock or through the identity of stockholders operate to make either the agent of the other, or to merge the two corporations into one."

A case which seems to us to be parallel to the case at bar in *In re* Watertown Paper Co., 169 Fed. 252 C. C. A. The facts in ths case are as follows: The Watertown Paper Co. is a corporation organized in 1864, with a capital of $20,000 for the manufacturing of paper. Its stock was held by Hiram Remington, Edward Remington, and their children. The Pulp Company was a corporation organized in 1887 by the same parties, and the capital stock was paid for with profits coming to the stockholders of the Paper Co. A petition in bankruptcy was filed against the Paper Co. and the Pulp Co. presented a claim for a large sum as a creditor. The affairs of the two corporations were closely intermingled; the corporations gave each other commercial paper and endorsed for each other. Separate books of account were kept for the two corporations, but the business of each was conducted from the office of the Paper

Co. The Pulp Co. had no bank account, all of its bills being paid by the Paper Co. and charged to its account, and all credits of the Pulp Co. were collected by and credited to the Paper Co.

> "The case thus presented is one in which the stockholders of two corporations are largely the same, in which both corporations have been under the same management, and in which their affairs have for years been involved and intermingled; and the legal question is whether these relations prevent the one corporation from enforcing against the bankrupt estate of the other a claim which, in case the the latter corporation had remained solvent, would have been both valid and enforceable. *It must be clearly borne in mind that this is not a case in which a creditor is suing a corporation upon the ground that it has so held itself out in connection with another corporation as, upon principles of estoppel, to render it responsible for a particular debt of the latter.* Any legal principle which would prevent the Pulp Company from collecting its claim from the estate of the Paper Company would permit all the creditors of the Paper Company to look to the Pulp Company for the payment of their demands — would, in effect, extend the jurisdiction of the bankruptcy court over the Pulp Company's property.
>
> Now, it is an elementary and fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations with which it may be connected. The fact that the stockholders of two separately chartered corporations are dentical, that one owns shares in another, and that they have mutual dealings, will not, as a general rule, merge them into one corporation, or prevent the enforce-

ment against the insolvent estate of the one of an otherwise valid claim of the other. As said by the Supreme Court of Arkansas in Lange vs. Burke, 69 Ark. 85, 88, 61 S. W. 165, in holding, in a case where two corporations were practically controlled by the same stockholders and had had intimate business relations, including the employment of the same bookkeeper, that a claim of one corporation would be enforced against the insolvent estate of the other:

'A corporation is an artificial being, separate and distinct from its agents, officers and stockholders. Its dealings with another corporation, although it may be composed in part of persons who own the majority of the stock in each company, and may be managed by the same officers, if they be in good faith and free from fraud, stand upon the same basis, and affect it and the other corporation in the same manner and to the same extent, that they would if each had been composed of different stockholders and controlled by different officers.'

And as said by the Circuit Court of Appeals for the Sixth Circuit in Richmond, etc., Const. Co. vs. Richmond, etc., R. Co., 68 Fed. 105, 15 C. C. A. 289, 34 L. R. A. 625:

'The contract company was a legal corporation, wholly distinct and separate from the railroad company. The fact that the stockholders in each may have been the same persons does not operate to destroy the legal identity of either corporation. Neither does the fact that the one corporation exercised a controlling influence over the other, through the ownership of its stock or through the identity of stockholders, operate to make either the agent of the other, or to merge the two corporations into one.' "

We have quoted somewhat at length from the above case, as the facts therein, and the holding of the court seems to be particularly pertinent to the case at bar.

We submit from the suggestions above made, and from the entire record in this case, that the judgment of the lower Court should be reversed, and each of the claims of claimant allowed.

Respectfully submitted,

BELDEN & LOSEY,
Attorneys for Appellant.

CHAS. P. HARRIS,
Of Counsel.